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9 JASON EDWARD THOMAS CARDIFF

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 vs.
16 JASON EDWARD THOMAS
CARDIFF

Case No. 5:23-CR-00021-JGB
Hearing Date: March 3, 2025
Courtroom: 1
Time: 2:00 p.m.

JASON CARDIFF'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
MOTION FOR ORDER FORFEITING BAIL AND FOR SUMMARY
ADJUDICATION OF OBLIGATION

21 Jason Cardiff, by and through his undersigned counsel, respectfully submits this
22 response in opposition to the United States' Motion for Order Forfeiting Bail and for
23 Summary Adjudication of Obligation (Dkt. 189).

25 The Government seeks a forfeiture of bail \$530,000 based on Defendant's failure
26 to appear for a motions hearing on January 30, 2025. On February 7, 2025, Defendant
27 recognizes that the Court issued an Order vacating the trial date and authorizing
28 issuance of an arrest warrant. Dkt. 196. Rule 46(f)(1) provides that the court "must

1 declare the bail forfeited if a condition of the bond is breached.” However, the Court
2 may set aside in whole or in part a bail forfeiture upon any condition the Court may
3 impose if the surety later surrenders the defendant into custody or it appears that justice
4 does not require forfeiture.

5 In the instant case, Defendant respectfully requests that the Court defer a final
6 ruling on bond forfeiture as he intends to return to the United States and surrender when
7 his doctors find that he is fit to travel, no later than three months from filing of this
8 motion. Defendant also submits that the amount of the bond set in December 2023 was
9 not reasonable in light of: (1) misleading statements by one of the prosecutors; and (2)
10 deferring the matter of forfeiting the entire bail should be determined upon Defendant’s
11 return.
12

13 I. Background Facts

14 On January 19, 2025, the Court granted an Order Vacating Trial Date, Tolling of
15 Speedy Trial Act, and Issuance of an arrest warrant. Dkt. 196. However, Defendant
16 respectfully submits that entry of a judgment is not automatic and that the Court retains
17 discretion under Rule 46(f)(2) to set aside or remit forfeiture in whole or in part based
18 on the circumstances of this case.
19

20 Defendant previously made known to the Court that he suffered serious health
21 conditions that required medical treatment while he was in Ireland. Dkt. 125. Mr.
22 Cardiff advised the Court, and provided the Court with medical evidence that he is and
23 was medically unfit to fly back to the United States. Id. at 2. Defendant’s primary
24 physician, Dr. M.S. recommended a three-to-four-month treatment plan to assure that
25 Mr Cardiff could fly safely without risking even more serious health consequences.
26 Dkt. 175. Mr. Cardiff submitted Dr. M.S.’ report under seal and asked the Court to
27 allow him to stay the additional time to protect his health.

28 The Court deemed the evidence submitted by Dr. M.S. to be insufficient as her

1 report indicated that Mr Cardiff's symptoms "could" pose a risk of serious injury and
2 that reduced cabin pressure and lower oxygen availability at altitude would greatly
3 increase the potential for ...complications. Dkt. 171 at 4.. On reconsideration,
4 Defendant submitted further evidence from Dr. M.S. However, the Court held that the
5 evidence was rejected because the email submission was "new" evidence that could not
6 have been submitted under L.R. 7-18. Dkt. 171 at 2.

7

8 **I. Rule 46(f) Does Not Require Forfeiture of Property or Funds If Justice
Does Not Require Forfeiture.**

9 It is well established that the purpose of bail bonds is to make sure defendants
10 show up for court, not to punish them or their families if they fail to appear. *United*
11 *States v. Vaccarro*, 51 F.3d 189, 192 (9th Cir. 1988); *United States v Bass*, 573 F.2d 258,
12 260 (5th Cir 1978) ("The purpose of a bail bond is not punitive; it is to secure the presence
13 of the defendant"). As set out below, this court has the discretion to set aside a forfeiture
14 "in whole or in part" "if it otherwise appears that justice does not require the forfeiture."

15 In *United States v. Vickers*, 144 F. Supp. 3d 1146, 1150 (E.D. Cal.2015), the
16 Court also noted that the purpose of the bail bond is not punitive. Rather a bond is to
17 insure that the accused will reappear at a later time. *Id.* citing *United States v Vaccaro*,
18 51 F.3d 189, 192 (9th Cir. 1995). The *Vickers* court emphasized that the court must
19 ensure that its decision remains free from frustration or vindictiveness. *Id.* citing *United*
20 *States v. Parr*, 594 F.2d 440, 444 (5th Cir. 1979).

21

22 In *United States v. Nguyen*, 279 F.3d 1112, 1115 (9th Cir. 2002), the Court noted
23 that "The law on bail forfeiture is neither complex nor voluminous." F.R. Crim. P. 46
24 provides that if there is a breach of a condition of a bond, the district court shall declare
25 a forfeiture of the bail." However, Rule 46 (e)(2) and (4) also provides that a district
26 court:

27

28 (2) ...may direct that a forfeiture be set aside in whole or in part,
upon such conditions as the court may impose, if a person

1 released upon execution of an appearance bond with a surety is
2 subsequently surrendered by the surety into custody or if it
3 *otherwise appears that justice does not require the forfeiture....*
4 [and]

5 (4) ...may remit it in whole or in part under the [same]
6 conditions....

7 Id. (emphasis supplied)

8 The *Nguyen* court set out six non-exclusive factors that may be considered in
9 deciding whether to set aside or remit forfeiture of the bond. These factors include:
10 (1)The defendant's willfulness in breaching a release condition; (2) the sureties'
11 participation in apprehending the defendant; (3) the cost, inconvenience, and prejudice
12 suffered by the government; (4) mitigating factors; (5) whether the surety is a
13 professional or a member of the family or friend; and (6) the appropriateness of the
14 bond amount. In *United States v. Amwest Sur. Ins. Co.*, 54, F.3d 601, 604 (9th Cir.
15 1995), the Court suggested that a defendant's ultimate appearance is a ground for
remittance, even if he was absent in prior proceedings.

16 Defendant addresses the *Nguyen* factors that apply in his case.

17 (1)Defendant's Willfulness in Breaching a Release Condition and Mitigating
18 Factors

19 In *Nguyen*, defendant was arrested at work despite consistent claims that he could
20 not surrender himself because he was at home recuperating from surgery. Id. at 1116.
21 Similarly, in *United States v Abernathy*, 757 F.2d 1012, 1015 (9th Circuit), the Court
22 found conduct to be willful where defendant fled nearly 1500 miles using aliases.

23 In the instant case, Defendant was granted a court order allowing him to travel
24 to Ireland and was granted extensions to seek medical treatment. While the Court
25 denied further extensions, Defendant was advised by his doctors that he was medically
26 unfit to travel and that he would suffer greater injury if he returned to the United States.
27 Dkt. 162. Dr. M.S. provided a 3-4 month treatment plan. Dkt. 175. Defendant
28 recognized that the Court ordered his return but, at the time, concluded that if he

1 returned without sufficient treatment, he would potentially suffer greater health
2 consequences resulting in disability and lose his ability to support his family. Dkt 178,
3 Defendant's Status Report.

4 As soon as the doctors find him fit to travel, Defendant fully intends to return to
5 the United States. **Exhibit A**, Declaration of Jason Cardiff ¶ 3.

6 (2) The Cost, Inconvenience, and Prejudice Suffered By The Government;

7 At this point, the Government has sustained limited cost or prejudice from
8 Defendant's absence on January 19, 2025. Moreover, there is no evidence that the
9 Defendant intends to do anything but get treatment in Ireland and return. Defendant
10 states he intends to return to the United States within the next three month (May,
11 2025). Defendant has continued to report to Pretrial Services. This factor potentially
12 favors the Government, but is entitled to little weight when the failure to appear took
13 place barely three weeks ago. This factor currently favors the Sureties.

14 (3) The Appropriateness of The Bond Amount.

15 This factor addresses whether the bond amount was reasonable at the time of its
16 issuance. At the time of the initial bond hearing, the Government argued that Mr.
17 Cardiff fled to Ireland to avoid prosecution notwithstanding the fact that: (1) Mr.
18 Cardiff gave notice to the FTC that he was moving to Dublin and updated his address;¹
19 and that he was unaware that he was being investigated. **Exhibit A**, Cardiff Dec. ¶¶s
20 4-5. This sort of argument likely resulted in an increase in the bond and need for
21 security. Defendant submits that the bond amount should be remitted to account for
22 this overstatement by Government counsel.

23 The reasonableness of the bond should also be evaluated in light of pretrial
24 motions that seek dismissal of part or all of the indictment based on Supreme Court
25

26 ¹ Counsel has ordered the transcript of the hearing to assure that his recollection of
27 events is correct. Counsel notes that the Government manually filed an audio copy of
28 the hearing. Dkt 90.

1 precedent. In sum, the bond should have been lower where, as here, the indictment was
2 either vague or substantively defective. Pending before the Court are four motions that
3 impact a determination of whether the bond was reasonable²: (a) Defendant's Motion
4 to Dismiss Count Two of the Indictment (Dubin) Dkt 106; (b) Motion to Suppress
5 Evidence (Dkt. 115); (c) Motion to Dismiss Counts 3 and 4 (Aguilar) Dkt. 134; and (d)
6 Motion to Dismiss Based on Double Jeopardy (Dkt. 135). In the context of this case,
7 due process requires that the Court rule on these motions before determining bond
8 forfeiture. *See United States v \$8850*, 461 U.S. 555, 564 (1983) (due process is flexible
9 regarding right to be heard at a meaningful time and timing of proceeding may impair
10 a party's ability to defend the propriety of a forfeiture).

11 **4. Conclusion**

12 The Government's is well aware of Mr. Cardiff's explanation for not appearing
13 at the January 30, 2025 hearing. The Government knows exactly where Mr. Cardiff
14 lives. Barely three days after the hearing, the Government filed its Motion to Forfeit
15 Bond. Dkt 189. The rush to secure a judgment and start executing on the Sureties'
16 property and assets appears calculated to punish people who are friendly with
17 Defendant---not to secure his appearance.

18 Defendant respectfully submits that the process can be stayed for several months
19 while his doctors provide the three month course of treatment necessary for his return.
20 At that time, the Court will have more information and be in a better position to render
21 a decision that is fair to all the parties.

22 **-SIGNATURE LINE ON NEXT PAGE-**

27

28 ² Sureties recognize that the Court indicated that it would issue decisions on the
pretrial motions at the January 30, 2025 hearing. Dkt. 198.

1 -
2 **Dated:** February 10, 2024
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6

Respectfully submitted,

7 By: /s/ Stephen R. Cochell
8 Stephen R. Cochell
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10 Attorney for Defendant
11 JASON EDWARD THOMAS CARDIFF
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SERVICE LIST

I HEREBY DECLARE THAT THE FOLLOWING COUNSEL HAVE BEEN SERVED WITH THIS DEFENDANT JASON CARDIFF'S NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE THROUGH THE COURT'S ECF OR NEXT GEN ELECTRONIC FILING SYSTEM:

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